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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,827	09/10/2003	Richard E. Rowe	IGT1P042D1/P000392-007	5966

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EXAMINER	
SAGER, MARK ALAN	

ART UNIT	PAPER NUMBER
3714	

NOTIFICATION DATE	DELIVERY MODE
05/10/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@wavsip.com

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/659,827	ROWE, RICHARD E.	
	Examiner	Art Unit	
	M. Sager	3714	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *5* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *19-46,49,50,61-66,71 and 72*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). April 27, 2010
13. ☐ Other: _____.

/M. Sager/
Primary Examiner, Art Unit 3714

Continuation of 11. does NOT place the application in condition for allowance because: Final is deemed proper as noted in interview summary and final.

Regarding remark on pages 9-12 that final is improper since Wells ('836, '585 and '634) lacks monitoring game performance, checking update trigger, determining that a configuration update has been triggered based upon update triggers and game performance of first game wherein update trigger is game event, game performance event, a player input or a combination thereof as claimed in 32 and proposed in 19 and 61, the Office disagrees for reasons stated in final action incorporated herein especially in light that remarks on page 10 state Wells '634 downloads software to add new features [similar langauge in each '585 and '836 or due to their incorporation of '634]. Also, as stated in final, Wells '634 [similar langauge in each '585 and '836 or due to their incorporation of '634] specifically states adding new features, new games and to correct programming errors that thereby regards game performance as would be interpreted by an artisan where programming errors impact transactions on gaming machine. Wells '634 states monitoring use and performance as tracking performance data claimed (4:49-6:65, 8:5-10; similar teaching in '585 and '836 shown in final or due to incorporation of '634) as evidence stated in final. As evidence thereto Assignee admission in background @ 1:17-4:13, especially 2:8-4:13 where accounting information and track performance of all the gaming machines under the control of an entity regards game performance of coin-in, coin-out and amount bet per game as would have been interpreted by an artisan is further evidence under MPEP 2131.01 of tracking performance of gaming machine(s); while Wain 4335809 (of record and applied in related app 10785526) specifically states to change or modify a game in memory where such change is instigated automatically when rate of use of machine falls to an unacceptable level where an artisan would interpret such as teaching performance of machine(s) based on transaction data of coin-in, coin-out or amount bet per game especially in light of aforementioned Assignee admission in instant application. Thus, an artisan would interpret Wells ('updating software by adding new features, new games, correct programming errors based on performance data at least since programming errors by happenstance impact coin-in, coin-out or amount bet per game when such errors causes improper payouts (i.e. paytable error) that cause players to stop playing (i.e. causing low/infrequent payout) or prevents their playing (i.e. game locks up as program error) as direct effect of programming error. The Office maintains claim 32 and proposed claims 19 and 61 fail to preclude teachings of Wells especially in light of Assignee admission or Wain for interpretation of transaction performance and where programming errors trigger to cause update, by happenstance, as would have been interpreted by an artisan, when programming errors impact coin-in, coin-out or amount bet per game where Wells ('836, '585 and '634) teaches same structure performing same function for same purpose. Adding a new game as taught by Wells includes adding its paytable or likewise correcting program error of a paytable that effects game performance is each a second game thereby where first/second/third are transient identifiers as conventional nomenclature. The added structure performing claimed functions in proposed claims19 and 61 is present in Wells as relating to the server/host discussed in final, esp in light of Assignee admission in instant background for interprettion of transaction data for a game event (i.e. lock up), performance event (i.e. program error or bug), player input (i.e. wgers for transactions or lack thereof for programming error), or combination thereof. Thus, the Office maintains final is proper when Assignee admitted prior art is as interpreted by an artisan regarding teachings of prior art for correcting programming errors including regarding transaction data (i.e. accounting, frequency of use, tracking performance) as relates to impact of programming errors or bugs that cause improper payout or cease functioning of gaming machine and scope of transient terms.

In reply to remarks on page 10-13 regarding final being improper in that Joshi lacks optional function relating to configuration update on gaming machine that enable a second game to be played as in claim 32 and proposed in claim 19 and 61, the Office disagrees for reasons stated in final action incorporated herein where first, second and third game are broader than alleged since the transient terms fail to preclude Joshi. Specifically, especially in light of aforementioned Assignee admission in background or Wain discussed above where claimed function fails to preclude teachings of Joshi for changing themes and/or paytable as recongiguring game machines in part on player appeal features (12:19-15:19) where other criteria than time are used to reconfigure (15:5-6) as would have been interpreted by an artisan at a time prior to the invention since the audio, visual elements include changing game symbols/sounds based on transaction data as game performance or player input [i.e. wagers] and thus includes second/third game as broadly claimed as same function performed by same structure for same purpose since game machine reconfigured to display favorite theme symbols relates to game performance as player input of at least coin-in and/or amount bet per game (12:39-15:19) for player appeal including paytable changes so as to reconfigure paytable resultant from historical performance of coin-in, coin-out and/or amount bet per game for determination of a category of users relating to peak and off-peak game play relates to altering first game to a second/third game as would have been interpreted by an artisan, contrary to Counsel/App[icant opine on pages 10-11 where the claimed trigger includes or fails to preclude Joshi. It is further noted that dependent claims and instant specification include changes for paytable, audio, visual update of software components that provides further evidence that Joshi discloses same structure performing same function for same purpose where argument on pages 10-13 is not persuasive regarding second/third game due to software change for sound, theme or paytable and equivalence thereby regarding game software components and instant disclosure also includes reconfigure game machines based in part on time such as peak and off-peak play periods. Further, the added structure performing claimed functions in proposed claims 19 and 61 is shown in Joshi as relating to the server/host discussed in final, especially in light of aforementioned Assignee admission or Wain. In essence, the species claimed fails to critically distinguish over teachings of Joshi claimed structure performing claimed steps for same purpose where breadth of claimed functions including second [third] game fails to preclude prior art for equivalent function as evidence shows in final, including although not deemed necessary, in light of Assignee admission in background or Wain for interpretation of transaction, accounting and performance data under MPEP 2131.01.

Finally, the 1449 lacks statement required by 1.97 for filing an IDS after prosecution is closed (i.e. after final) contrary to statements in cover letter stating prior to final.